

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

TERRY D. STANCILL, ET AL.

Appellants

v.

HARFORD SANDS, INC.

Appellee

\*

\*

\*

\*

\*

\*

\*

\*

\*

\*\*\*\*\*

Civil No. JFM-03-1884

MEMORANDUM

Terry D. Stancill, Jerry Stancill, Timothy K. Stancill, and Timothy D. Stancill have appealed from a ruling made by Bankruptcy Judge James Schneider disallowing a claim they had filed against the Debtor, Larry Stancill.<sup>1</sup> Appellants' claim is in the amount of \$250,688.17 and arises from an alleged agreement under which the Debtor removed fill materials from a parcel of real estate which was once owned by a family-run business.

Appellants contend that Judge Schneider made a number of erroneous legal rulings in rejecting their claim. In his oral opinion Judge Schneider did refer to (1) the "insider" status of Appellants, (2) the unenforceability of their claim outside of bankruptcy, (3) the lack of any adequate assignment of the alleged claim to Appellants, and (4) the issue of limitations. I do not read his opinion however, as simply making rulings on discrete legal issues. To the contrary, while Judge Schneider may have ruled in favor of the Debtor on a particular legal issue if he had had time to write an extensive opinion, the various factors he mentioned also provided support

---

<sup>1</sup>Larry Stancill is the brother of three of the appellants and the uncle of one of them

for his factual finding that Appellants' claim was "too speculative."<sup>2</sup>

Factual findings made by a Bankruptcy Court "shall not be set aside unless clearly erroneous." Bankruptcy Rule 8013. Here, the record fully supports that factual finding made by Judge Schneider that Appellants' claim was "too speculative" and not to be credited. On the cold record alone, Appellants' insider status, their long delay in asserting their claim, the total absence of proof concerning the assignment of the alleged claim to them by corporate predecessors, and the absence of careful record-keeping all fully support Judge Schneider's finding. Although Appellants did present a ledger sheet on which the Debtor allegedly showed an account payable (for part of Appellants' claim to a corporate predecessor of Appellants), this ledger sheet was suspicious on its face in various respects. The name "Pappy, Inc." was written over top of "Stancills, Inc.," and the ledger sheet reflects entries through 1990 although it also contains a notation that was prepared in 1987. Furthermore, the ledger sheet was produced by an

---

<sup>2</sup>Like Judge Schneider, I do not find it necessary to address in any detail the various legal issues Appellants raise. Indeed, because any statements that I might make concerning them would be pure dictum, I believe it would not be prudent for me to address those issues. I will, however, make four observations. First, if Appellants appeal from my ruling and if the Fourth Circuit does not agree with my reading of Judge Schneider's oral opinion, I believe the proper course to follow would be to remand the case to Judge Schneider for him to clarify any ambiguity as to whether he was making a factual finding that Appellants had not met their burden of proof (including his express assessment of the credibility of the witnesses). Second, because Appellants had the burden of proof, the Debtor properly raised issues regarding Appellants' lack of standing and the illegality of the removal of some of the fill because Pappy, Inc. did not have a surface mining permit. Again, if the case ultimately is remanded to Judge Schneider and resolution of those issues become critical to his decision, he should rule upon them. Third, if Judge Schneider ultimately were to rule in favor of Appellants on all other issues, I believe he must also decide the issue of laches raised by the Debtor on his cross appeal. Fourth, to the extent that Appellants (to defeat the Debtor's limitations argument) contend that the agreement between the parties was that the Debtor would pay for the fill when he was able to do so, I question whether that condition precedent has been met since the Debtor is in bankruptcy and remains unable to pay for the fill without meeting his other valid obligations.

accountant who has worked for Appellants for many years and who labored under substantial conflicts of interests.

It must also be recognized that Judge Schneider did not simply have a cold record in front of him. He held a five-hour hearing before issuing his oral opinion. This provided him with “the opportunity . . . to judge the credibility of the witnesses.” Bankruptcy Rule 8013 requires that “due regard” be given to that fact by a reviewing court. In that regard, I note that while on this appeal Appellants point to various pieces of testimony they contend support the alleged agreement upon which they rely, Judge Schneider obviously did not credit that testimony. Otherwise, he would not have found Appellants’ proof to be “too speculative.”

In short, although Appellants have raised various legal issues on this appeal, those issues are only of academic interest in light of Judge Schneider’s finding that Appellants failed to meet their burden of proof by presenting evidence that was “too speculative.” A separate order affirming Judge Schneider’s disallowance of Appellants’ claim is being entered herewith.

Date: October 6, 2003

/s/  
J. Frederick Motz  
United States District Judge

